

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MARLIN THOMAS,

Petitioner,

v.

WARDEN, WARREN CORRECTIONAL  
INSTITUTION,

Defendant.

CASE NO.: 1:12-cv-878

Barrett, J.  
Bowman, M.J.

**OPINION AND ORDER**

This matter is before the Court on the Magistrate Judge's Report and Recommendation ("Report") in which it is recommended that Petitioner's November 13, 2012 *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed for lack of prosecution due to the failure to submit an *in forma pauperis* application or pay the \$5.00 filing fee required to initiate the action within 30 days of the Magistrate Judge's December 3, 2012 Deficiency Order. (Doc. 4).

The parties were given proper notice pursuant to Federal Rule of Civil Procedure 72(b), including notice that the parties may waive further appeal if they fail to file objections in a timely manner. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).<sup>1</sup> Petitioner timely filed his Objections to the Report. (See Doc. 6).

In the December 12, 2012 Deficiency Order, the Magistrate Judge notified Petitioner that he had to pay the \$5.00 filing fee or file a motion for leave to proceed without prepayment of fees within thirty days of the Order. (Doc. 2). She further notified

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<sup>1</sup> Notice was attached to the Report regarding objections. (Doc. 4, p. 3).

Petitioner that his "failure to comply with this Order will result in the dismissal of the action for want to prosecution." (Doc. 2). In light of that Order, Petitioner should have been diligent in determining whether his *in forma pauperis* application had been properly filed within the prescribed timeframe. As the Magistrate Judge correctly found, Petitioner's failure to do so is grounds for dismissing the case for lack of prosecution.

In his objections, Petitioner contends that he hand-delivered his completed application to proceed *in forma pauperis* to the Warren Correctional Institution's prison staff according to the institutional procedures before the 30-day period expired from the Court's December 3, 2012 Deficiency Order, but that the prison staff did not submit it to the Court. (Doc. 6, p. 1). He requests that the Court decline to dismiss his petition and instead order the Warren Correctional Institution to forward the completed *in forma pauperis* application or provide an alternative order regarding the same.

Considering the statements of Petitioner in his objections, along with the lack of evidence before the Court showing that Petitioner did not submit the materials as required by the institutional procedures, the Court declines to adopt the Report (Doc. 4) and concludes that Petitioner should be given an additional thirty (30) days to submit his application to proceed *in forma pauperis* or pay the \$5.00 filing fee.

Accordingly, the Court **DECLINES TO ADOPT** the Report (Doc. 4) and **ORDERS** that Petitioner submit an *in forma pauperis* application or pay the \$5.00 filing fee within **thirty (30) days** of entry of this Order. Petitioner is advised that failure to comply with this Order within the additional thirty (30) day timeframe will result in dismissal of this action for lack of prosecution.

**IT IS SO ORDERED.**

s/ Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court